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Attorney General's Office files lawsuit over term of NKS lease

Wilmington – The Attorney General's Office announced today that it has filed a lawsuit in which DelDOT is seeking to reform the length of a 2006 lease between NKS Distributors and DelDOT for a parcel of state-owned land in Milford. It is the State's position that the lease term was intended to be 5 years, followed by two optional five-year extensions, not a 66-year term as written into the signed lease. The suit asks the Court of Chancery to amend the lease to reflect the intent of the parties.

"No one should be able to benefit from a mistake at the expense of the citizens, especially in a public lease," Attorney General Beau Biden stated.

In 2004, NKS Distributors, Inc., a wholesale liquor distributor, sought the State's assistance in leasing land for a new distribution warehouse. DelDOT identified a 10-acre parcel along Route 1 it owned in Milford for lease. The agency determined that it could enter into a lease for the property, taking into account the fact that it would eventually resume control over all or a part of the property for a planned interchange project. Written communications from DelDOT officials during the lease negotiations stated that the lease was to have an initial term of five years. Moreover, a May, 2006 appraisal conducted by DelDOT, which suggested a fair market rent for the property, assumed a lease term of five years, with two potential five-year extensions.

The Delaware Department of Justice recently requested information in NKS' possession that could explain the discrepancy between DelDOT's expressed lease term intentions or support a claim to an initial 66-year term with unlimited potential five-year extensions. NKS has not provided any such evidence.

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